

Decision 01-11-020 November 8, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Mpower Communications Corp. (U 5859 C) for Authority to Withdraw from Provision of Service in Specified Local Exchange Areas in California.

Application 01-05-041
(Filed May 5, 2001)

**OPINION GRANTING APPLICATION TO WITHDRAW
FROM PROVIDING SERVICES IN SELECTED EXCHANGES**

A. Summary

This decision grants Mpower Communications Corp.'s (Mpower) Application to withdraw from providing local exchange, toll, switched access, and related services in specified local exchange areas in California.

B. Background

In this Application, Mpower seeks authority to withdraw from provision of local exchange, toll, switched access, and related services in the Diamond Bar and Monrovia local exchange areas in LATA 5 (Los Angeles) and the Bishop Ranch, Burlingame, Colma, Milpitas, Mountain View, Pacifica, Palo Alto, Redwood City, San Bruno, San Carlos, San Francisco, San Jose, San Mateo, San Rafael, Santa Clara, Sunnyvale, and Watsonville local exchange areas in LATA 1 (San Francisco). In a September 7, 2001, Amendment to its Application, Mpower seeks authority to withdraw from provision of services in additional local exchange areas: Sausalito and El Sobrante (LATA 1), South Pasadena and Sylmar (LATA 5), and Chula Vista (LATA 6, San Diego). Mpower's authority in its other

exchanges (approximately 130) in those and other LATAs will remain in effect. Mpower seeks expedited approval on an ex parte basis of this Application. On September 7, 2001, Mpower filed a motion seeking expedited treatment of its Amendment and Application, because Mpower must cut costs immediately in order to align costs with revenues.

In Decision (D.) 97-09-011, we granted Mpower authority to provide resale interexchange (toll) and local exchange service under its prior business name of MGC Communications Corp. We approved Mpower's reorganization in D.01-05-095.

Mpower had four customers for its interstate Digital Subscriber Line (DSL) services within the affected exchanges. Mpower had 132 customers receiving local, toll and other services in the additional exchanges for which it seeks authority to withdraw services in the Amendment. Forty-four customers had found alternate providers as of October 8, 2001. Mpower had commenced efforts to transfer the remaining three customers affected by its Application to an alternate DSL provider of their choice. In August 2001, Mpower notified the additional 132 customers of its plans to withdraw from providing service but did not inform customers it needed the Commission's authority. Mpower sent a corrected letter in September 2001, which notified customers that Commission approval was required before it could stop providing service, gave 30 days' advance notice of the proposed transfer, provided a description of the transfer, the opportunity to switch to another carrier, and both a toll-free number and a website where customers could obtain more information.

Mpower will oversee the DSL customers' transition to a new carrier, will compensate customers for expenses incurred, and will not curtail service to any customer until transfer to a new carrier has been completed. Mpower will oversee the transfer of its local exchange/toll customers to a new carrier.

Mpower will provide refunds to local/toll customers that have prepaid for telecommunications services. No customer has objected to Mpower's decision to discontinue provision of DSL and local/toll services.

The challenging debt and equity markets currently facing all companies in the telecommunications and technology sectors drove Mpower's decision to exit these exchanges and other markets across the nation. In order to remain an effective and vigorous competitor in other areas of California, Mpower must immediately curtail operations in certain exchanges in California to the extent indicated on the tariff sheets attached as Exhibit A to the Application and Exhibit D to the Amendment. Mpower requests that the Commission authorize Mpower to file those tariff sheets and make them effective on one day's notice.

Notice of filing of the application appeared in the Commission's Daily Calendar on May 25, 2001. Notice of the filing of the Amendment appeared in the Commission's Daily Calendar on October 2, 2001.

C. Discussion

We authorize Mpower to withdraw from providing local exchange, toll, switched access, and related services in specified local exchange areas in California. Mpower will continue to provide services in its remaining exchanges. Under General Order (GO) 96-A, Section XIV, a carrier must obtain authority from the Commission before withdrawing services. Although we make this authority to discontinue providing services in selected exchanges effective today, Mpower cannot cease providing services to individual customers until they transfer to an alternate carrier.

Section 2889.3's notice requirements govern the transfer of all or an entire class of customers from one interexchange carrier to another. Similarly, the notice requirements for transfer of a customer base from one carrier to another,

adopted in D.97-06-096, apply to the transfer of a class of customers from a competitive local carrier to an alternate provider. (*See generally, Re Verizon Select Services Inc.*, D.01-06-036.) Mpower notified its customers receiving local exchange, toll, and other services of its plan to withdraw from providing service. The first notice was deficient and was replaced by a second notice that conformed with our requirements. To the best of Mpower's knowledge, no customer switched carriers between the two notices. We have received no customer complaints concerning that notice. We find that Mpower's second letter fulfills the customer notice requirements to withdraw from providing local exchange and toll services. No customer appears to have been harmed by Mpower's first letter. Under these circumstances, we need take no corrective action on behalf of Mpower's customers.

Mpower intends to oversee the transition of its remaining three DSL customers to alternate providers and will compensate those customers for expenses incurred. Mpower will oversee the transition of its local exchange/toll customers to another carrier and will return customer deposits and refund any advance payments made for services not received.

We regret Mpower's decision to reduce its competitive offerings in California, but are encouraged that Mpower will continue to offer services in the overwhelming majority of its exchanges in California. There is no reason to delay granting the requested relief.

This decision grants the authority Mpower seeks, subject to the condition that it comply with the guarantees it has made with respect to its customers and that it continue to provide service to those customers until they have switched to an alternate carrier. We authorize Mpower to file a compliance advice letter in conformance with the authority granted in this decision effective on one day's notice.

In Resolution ALJ 176-3064 dated May 24, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest or response has been received. Public hearing and altering the preliminary determinations made in Resolution ALJ 176-3064 are not necessary.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Mpower was certificated to provide resale interexchange (toll) and local exchange service in 1997 under its prior business name of MGC Communications Corp.

2. Mpower seeks authority to withdraw from provision of local exchange, toll, switched access, and related services in the Diamond Bar, Monrovia, South Pasadena, and Sylmar local exchange areas in LATA 5 (Los Angeles), the Bishop Ranch, Burlingame, Colma, Milpitas, Mountain View, Pacifica, Palo Alto, Redwood City, San Bruno, San Carlos, San Francisco, San Jose, San Mateo, San Rafael, Santa Clara, Sunnyvale, Watsonville, Sausalito and El Sobrante local exchange areas in LATA 1 (San Francisco), and Chula Vista local exchange area in LATA 6 (San Diego).

3. Mpower had four DSL customers at the time it filed its application. One customer planned to terminate service. Mpower intends to oversee the transition of its remaining three DSL customers to alternative providers and will compensate those customers for expenses incurred.

4. Mpower had 132 local exchange/toll customers at the time it filed its Amendment. Mpower intends to oversee the transition of these customers to a new carrier. Mpower will return customer deposits and advance payments.

5. Mpower sent two notice letters to its local exchange/toll customers. The first did not inform them that Commission approval was required before Mpower could discontinue providing service. The second letter notified customers that Commission approval was required, gave 30 days' advance notice of the proposed transfer, provided a description of the transfer, the opportunity to switch to another carrier, and both a toll-free number and a website where customers could obtain more information.

6. Mpower states no customer switched carriers between the two notices.

7. No protest to the Application or Amendment has been filed.

Conclusions of Law

1. Under GO 96-A, Section XIV, Commission approval is required before a carrier may withdraw from the provision of public utility service.

2. Mpower should be authorized to withdraw from the provision of local exchange, toll, switched access, and related services in the specified exchanges subject to the condition comply with the guarantees it has made with respect to its customers and that it continue to provide service to those customers until they have switched to an alternate carrier.

3. Since the matter is uncontested, the decision should be effective on the date it is signed.

4. Mpower is authorized to file a compliance advice letter in conformance with the authority granted in this decision effective on one day's notice.

O R D E R

IT IS ORDERED that:

1. The application of Mpower Communications Corp. (Mpower) to withdraw from provision of local exchange, toll, switched access, and related services in the Diamond Bar, Monrovia, South Pasadena, and Sylmar local exchange areas in LATA 5 (Los Angeles), the Bishop Ranch, Burlingame, Colma, Milpitas, Mountain View, Pacifica, Palo Alto, Redwood City, San Bruno, San Carlos, San Francisco, San Jose, San Mateo, San Rafael, Santa Clara, Sunnyvale, Watsonville, Sausalito and El Sobrante local exchange areas in LATA 1 (San Francisco), and Chula Vista local exchange area in LATA 6 (San Diego) is granted subject to the terms and conditions contained in this order.

2. Mpower's existing Certificate of Public Convenience and Necessity shall remain in effect following termination of services from the affected local exchange areas.

3. This proceeding is closed.

This order is effective today.

Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.